

13-05-2025
Item No.3
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.7506 of 2025
Atul Engineering Udyog Pvt. Ltd.
-vs-
Union of India & Ors.

Mr. Swarup Paul
Mr. Himansu Gupta
Mr. Rohan S. Nandy
Mr. Kousik Sahoo ...for the petitioner

Mr. Asit Kumar Chaubey
Ms. Amrita Pandey ...for the respondents

1. The petitioner is a Micro, Small and Medium Enterprise. It participated in a tender process floated by the Chittaranjan Locomotive Works. The petitioner is aggrieved by the order of debarment for a period of six months passed by the authority on January 1, 2025.
2. It appears that in response to a tender floated by the authority, the petitioner submitted its bid in respect of one number of coupler on December 3, 2024 and the bid was opened on December 5, 2024.
3. By a communication dated December 18, 2024, the petitioner was intimated that the authority sought confirmation for supply of the subject item, if the firm was found technically suitable for placement of order. The communication clearly mentioned that a line of satisfactory reply should reach the office immediately after the receipt of the said communication to facilitate the

finalization of the above tender.

4. Immediately by a communication dated December 18, 2024, the petitioner disclosed before the authority that by mistake on the part of the staff of the company the said tender was submitted. A request was made to disregard the bid for the tender. After the aforesaid communication was made by the petitioner, the order of debarment was passed.
5. Learned counsel for the petitioner submits that no notice or opportunity of hearing was given to the petitioner prior to passing the order of debarment. There has been violation of principle of natural justice. Prayer has been made to set aside the impugned order of debarment.
6. Learned counsel representing the respondent authorities relies upon the report filed in court today. The report annexes a copy of the undertaking submitted by the petitioner wherein it is clearly mentioned that if the company withdraws or modifies the bid during the validity period or upon award of the contract and on being called upon to submit the performance security/security deposit, then the company shall be debarred from exemption of submitting bid security/earnest money deposit and performance security/security deposit for a period of six months.
7. It has been submitted by the authority that there was no requirement of granting any further opportunity of hearing to the petitioner prior to passing the order of debarment. The petitioner was well aware that in terms of the tender document, the petitioner could have neither withdrawn nor modified the bid.

8. It has been submitted that the petitioner was found to be the highest bidder. Due to withdrawal of bid by the petitioner, the tender had to be cancelled and fresh tender had to be floated for selecting an eligible bidder.
9. The office memorandum dated April 21, 2022 published by the Government of India, Ministry of Finance, Department of Expenditure Procurement Policy Division, has been relied upon in support of the submission that if the bidder whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the procurement authority shall re-tender the case.
10. Prayer has been made to dismiss the writ petition.
11. I have heard the respective submissions advanced on behalf of the parties and perused the documents on record.
12. It appears that after the petitioner submitted the bid on December 3, 2024, the same was opened on December 5, 2024. By a communication dated December 18, 2024 the petitioner was directed to confirm with regard to the supply of the subject item, if its bid was found technically suitable for placement of order. The petitioner was requested to put in a line of satisfactory reply to facilitate finalization of the tender.
13. The petitioner was never intimated as to whether it was found to be the L1 bidder. The petitioner was neither intimated as to whether its bid was found successful or not.

14. On receipt of the communication dated December 18, 2024, the petitioner immediately replied on the same date disclosing that the bid was submitted by mistake on the part of the staff of the company and a request was made to disregard the said bid. The petitioner neither modified the bid nor withdrew from the tender process. It was a simpliciter statement that the bid was submitted by mistake with a request to ignore the same. On receipt of the said request from the petitioner to ignore the bid on December 18, 2024, the petitioner was not intimated anything thereafter and the order of debarment was passed on January 1, 2025.
15. After the order of debarment was passed, the petitioner made repeated representations disclosing its stand. The petitioner clearly mentions that it does not have the eligibility to participate in respect of the subject item and the bid was submitted erroneously.
16. The submission of the respondent authority that the petitioner was selected as the L1 bidder does not appeal to the court. The petitioner having disclosed its ineligibility to submit its bid in respect of the subject item could not have been selected as the successful bidder. The bid of the petitioner was liable to be cancelled in view of its ineligibility to bid against the subject item.
17. The Office Memorandum dated April 21, 2024 relied upon by the authority mentions about withdrawal from the lowest evaluated bid or if the successful bidder fails to sign the procurement contract.
18. In the instant case, the petitioner was never intimated as to whether the company was

selected as the lowest bidder. There is no question of acceptance of the bid of the petitioner, because the petitioner disclosed that the bid was submitted erroneously. The authority could not have proceeded to debar the petitioner without granting any opportunity of hearing as the same amounts to violation of principle of natural justice.

19. The undertaking relied upon by the authority cannot be made applicable in the instant case, as the petitioner was ineligible to put in its bid for supplying the subject item.
20. In view of the above, the court is inclined to hold that the order of debarment passed against the petitioner is an illegal one and liable to be set aside.
21. Accordingly, the impugned order of debarment dated January 1, 2025 is set aside.
22. The writ petition is allowed to this extent.
23. Exception to the affidavit of the first, second and third respondents filed in court be taken on record.
24. All parties are to act on the server copy of this order duly downloaded from the official website of this court.
25. Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]

